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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 GUSTAVE W. LINK,

No. C 10-1382 MHP

9 Plaintiff,

10 **MEMORANDUM & ORDER**

11 v.

Re: Defendants' Motion to Dismiss

12 PILE DRIVERS UNION LOCAL 34;
13 NORTHERN CALIFORNIA CARPENTERS
14 REGIONAL COUNCIL TRUST FUND
15 (ERISA); CARPENTERS 46 NORTHERN
16 CALIFORNIA COUNTIES - JOINT
17 APPRENTICESHIP TRAINING
18 COMMITTEE (JATC); STEVE TILTON;
19 JOHN BULLOCK; and ROBERT
20 ALVARADO,

21 Defendants.
22 _____ /

23 Plaintiff Gustave Link ("Link") filed this action against various defendants alleging that they
24 retaliated against him because he publicly criticized union officials. Now before the court is
25 defendants' motion to dismiss Link's complaint. The court finds this motion suitable for decision
26 without oral argument. Civil L.R. 7-1(b). Having considered the parties' submissions, and for the
27 reasons set forth below, the court enters the following order.

28 **BACKGROUND**

Link was a member of the Pile Drivers Union Local 34. Docket No. 1 ("Complaint") ¶ 5.
He received training as a pile driver through the Carpenters 46 Northern California Counties - Joint
Apprenticeship Training Committee ("JATC"), a joint labor and management sponsored

1 apprenticeship training program. *Id.* As an apprentice pile driver and member of the local union,
2 Link was employed by KFM Joint Venture (“KFM”) to perform construction work on the San
3 Francisco Bay Bridge. *Id.* While working at KFM and attending apprenticeship training classes,
4 Link voiced complaints against union officials for ignoring unsafe working conditions. *Id.* ¶ 6. In
5 early 2004, Link stopped attending classes at the apprenticeship school because of a work-related
6 heart condition. *Id.* ¶ 8. On March 11, 2005, Link was informed that he would be terminated if he
7 failed to provide proof of his medical condition. *Id.* ¶ 12. On July 22, the JATC terminated Link’s
8 apprenticeship agreement and removed him from the apprenticeship program. Link alleges that the
9 JATC terminated him as retaliation for his complaints against union officials. *Id.* ¶ 36.

10 On January 20, 2006, Link filed a complaint claiming he was entitled to relief for alleged
11 violations of his constitutional rights, disability discrimination, violations of the Labor-Management
12 Relations Act, violations of the Labor Management Reporting and Disclosure Act (“LMRDA”),
13 breach of fiduciary duty, breach of union contract, legal malpractice, violations of the California
14 Labor Code, negligence and conspiracy by the Pile Drivers Union Local 34 and numerous associated
15 individuals. This court dismissed Link’s complaint and granted him leave to amend. *Link v.*
16 *Rhodes*, No. C 06-0386, 2006 WL 1348424 (N.D. Cal. May 17, 2006) (Patel J.). On July 5, 2006
17 Link filed an amended complaint alleging violations of his constitutional rights, the LMRDA, the
18 Americans with Disabilities Act (“ADA”), the Racketeering Influenced and Corrupt Organizations
19 Act (“RICO”) and the Hobbs Act. All claims in Link’s amended complaint save the ADA claims
20 alleged against institutional defendants were dismissed. *Link v. Rhodes*, No. C 06-0386, 2006 WL
21 3050859 (N.D. Cal. Oct. 24, 2006) (Patel, J.) (*Link I*). Link was ordered to file with this court a
22 copy of the Equal Employment Opportunity Charge he filed with the Equal Employment
23 Opportunity Commission in order to ensure that his ADA claims were properly pled. *Id.* at *4.
24 Link’s amended complaint was thereafter dismissed in its entirety because he failed to follow the
25 court’s order. Link appealed to the United States Court of Appeals for the Ninth Circuit, which
26 affirmed this court. *Link v. Rhodes*, 315 Fed. Appx. 624 (9th Cir. 2009). Link then filed a petition
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1 for certiorari with the United States Supreme Court, which was denied on October 28, 2009. *Link v.*
2 *Rhodes*, 130 S. Ct. 117 (2009).

3 On April 1, 2010, Link filed the instant action against effectively the same defendants as in
4 his 2006 complaints. *See* Complaint. Link now claims various violations of the LMRDA and the
5 Employee Retirement Income Security Act (“ERISA”).

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7 LEGAL STANDARD

8 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed against a
9 defendant for failure to state a claim upon which relief can be granted against that defendant. A
10 motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of a claim.” *Navarro v. Block*,
11 250 F.3d 729, 732 (9th Cir. 2001). “Dismissal can be based on the lack of a cognizable legal theory
12 or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica*
13 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A motion to dismiss should be granted if a plaintiff
14 fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*
15 *Twombly*, 550 U.S. 544, 570 (2007). This “plausibility standard is not akin to a ‘probability
16 requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.”
17 *Ashcroft v. Iqbal*, ___ U.S. ___, ___, 129 S.Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at
18 556). “Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific
19 task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*,
20 129 S. Ct. at 1950.

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22 DISCUSSION

23 Defendants claim that Link’s complaint is barred by res judicata because of *Link I*. Res
24 judicata, or claim preclusion, prevents the re-litigation of a claim previously tried and decided.
25 *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1320 (9th Cir. 1992); *see Stewart v. U.S. Bancorp*,
26 297 F.3d 953, 957 (9th Cir. 2002) (“Supreme Court precedent confirms that a dismissal for failure to
27 state a claim under Rule 12(b)(6) is a ‘judgment on the merits’ to which res judicata applies.” (citing
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1 *Federated Dep't Stores v. Moite*, 452 U.S. 394, 399 n.3 (1981))). Res judicata also “bars all grounds
 2 for recovery which could have been asserted, whether they were or not, in a prior suit between the
 3 same parties on the same cause of action.” *McClain v. Apodaca*, 793 F.2d 1031, 1033 (9th Cir.
 4 1986). Accordingly, any claim which was either brought or could have been brought in *Link I* “with
 5 respect to all or any part of the same transaction, or series of connected transactions, out of which
 6 the action arose,” is bared by res judicata. Restatement (Second) of Judgements § 24(1) (1981).

7 All allegations in Link’s complaint arise out of the same transaction, or series of transactions,
 8 as the claims in his 2006 complaints. There, he alleged that the union and other defendants
 9 conspired to terminate him from the apprenticeship program because of his criticism of union
 10 leadership. *Link I*, 2006 WL 3050859 at *3. Here, Link alleges identical facts as the basis for all his
 11 causes of action. Specifically, he alleges that his “termination from the Apprenticeship Program was
 12 motivated and instigated by individual union officials . . . in ‘retaliation’ to [his] criticism of union
 13 official Rhodes and others failure to protect the safety and jobs of union members working for
 14 KFM.” Complaint ¶ 36; *see id.* ¶ 48 (“individual[] union officials . . . were motivated to terminate
 15 Link from apprenticeship program in retaliation for criticism of union officials”); ¶ 54 (union
 16 officials “all conspired to terminate Link from the apprenticeship program in retaliation for
 17 criticizing union officials . . .”). He now also alleges that this termination violated his rights under
 18 the LMRDA and ERISA. *Id.* ¶ 39 (union officials “all jointly conspired together . . .” to terminate
 19 Link’s apprenticeship program “. . . because of his criticism of union officials . . .” which
 20 “. . . violated Link’s rights under 29 U.S.C. sec[tions] 411(a)(2) and . . . 529.”); ¶ 49 (“individual
 21 JATC and Local 34 members in their individual capacity as union officials and trustees violated the
 22 [LMRDA] by terminating Link from the apprenticeship program . . .”); ¶ 51 (“JATC violated
 23 ERISA by terminating his membership from the apprenticeship program . . . because [he] exercised
 24 his freedom of speech under 411(a)(2)”); ¶ 53 (“the Union Local 34 . . . continues to retaliate . . .”
 25 which “. . . violates ERISA and LMRDA.”); ¶ 56 (termination and resulting benefits determination
 26 breached union officials fiduciary duty and violated ERISA and the LMRDA). Link’s claims here
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1 thus arise out of the same transaction, or series of transactions, as the claims in his 2006 complaints;
2 consequently, they are all barred by res judicata.

3 Res judicata “provides that when a court of competent jurisdiction has entered a final
4 judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter
5 bound not only as to every matter which was offered and received to sustain or defeat the claim or
6 demand, but as to any other admissible matter which might have been offered for that purpose.”
7 *Comm’n v. Sunnen*, 333 U.S. 591, 587 (1948) (internal quotations omitted). In 2006, Link’s
8 LMRDA claims were dismissed because he failed “to allege that he exhausted all intraunion
9 remedies, or that pursuing such remedies would be inadequate or futile.” *Link I*, 2006 WL 3050859
10 at *4. Link now alleges that there are no intraunion grievance procedures for union members against
11 union officials; allegations that would have cured his deficient 2006 complaints. Link’s failure to
12 cure his LMRDA claims in 2006 constitutes “other admissible matter[s]” which might have been
13 offered to sustain his claim. *Sunnen*, 333 U.S. at 587. Accordingly, because all of the LMRDA
14 claims alleged here could have been brought in 2006, those claims are barred by res judicata.

15 Similarly, Link’s argument that his ERISA claims are not barred by res judicata because they
16 were not raised in *Link I* also fails. Just as with his LMRDA claims, Link’s ERISA claims rely upon
17 the alleged conspiracy to terminate Link’s apprenticeship agreement because of his criticism of
18 union officials. Complaint ¶ 51. Link provides no reason as to why he could not have brought these
19 claims in his 2006 action. Accordingly, Link’s ERISA claims are barred by res judicata.

20 Finally, Link’s claim that defendants’ ex parte application violates due process has no merit.
21 The application gave defendants leave to file a motion to dismiss, as allowed by the Federal Rules of
22 Civil Procedure. Link filed a lengthy opposition to the motion to dismiss; consequently, no due
23 process violation exists.

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CONCLUSION

For the reasons forgoing reasons defendants' motion to dismiss plaintiff's complaint is GRANTED and plaintiff's complaint is DISMISSED with prejudice.

IT IS SO ORDERED.

Dated: July 29, 2010



MARILYN HALL PATEL
United States District Court Judge
Northern District of California